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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#5

In re application of: Levine

Serial No.: 08/710,645

Group No.: 2602

Filed: September 18, 1996

Examiner: Flynn

For: TELEVISION SYSTEM MODULE WITH REMOTE CONTROL CODE
DETERMINATION

AFFIDAVIT OF JOHN G. POSA

I, John G. Posa, being duly sworn, do here state as follows:

1. I am a Michigan attorney, licensed to practice before the United States Patent and Trademark Office, Registration No. 37,424.

2. I am the legal representative of the Applicant named on the U.S. patent application Serial No. 08/710,645 referenced above, which has been filed to reissue U.S. Patent No. 5,365,282.

3. I was also the attorney responsible for the prosecution of the application which led to the issuance of the '282 patent.

4. I have prepared this statement to point out how and when, the error relied upon by the Applicant arose during the prosecution of the original patent application, as required under 37 CFR §1.175(a)(5).

5. The patent subject to reissue, U.S. Patent No. 5,365,282, was applied for on January 19, 1993, and issued on November 15, 1994. On June 16, 1993, U.K. patent application GB 2 262 374 A was published. As the statement previously submitted by Applicant, Michael R. Levine points out, this patent application discloses certain of the subject matter previously claimed in the '282 patent. In particular, this application, which claims priority

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of U.S. application Serial No. 806,918, and which ultimately led to the issuance of U.S. Patent No. 5,448,370, teaches apparatus which may be used to automatically determine the proper control code format for a cable box by issuing a channel change command and observing if the cable box responds to such commands.

6. A search could not have been performed to identify U.S. Patent No. 5,448,370, since it was pending in the U.S. Patent Office at all times during the pendency of the application which led to the '282 patent.

7. However, error was committed by my office by not performing a follow-up search of published foreign applications following the application which led to the '282 patent, for which reissue is now sought.

8. As the U.K. application was published some five months after the filing of the application which led to the '282 patent, had a follow-up search of published European applications been performed, I would have recommended to Applicant to modify the claims in accordance with the amendments made as part of the above-captioned reissue application.

9. When the published U.K. application was brought to my attention, which I believe was August of 1996, I immediately brought it to the attention of the Applicant, and the subject reissue was filed.

Date:

9/2/97


John G. Posa